



The Florida Senate

Interim Project Report 00-34

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Committee on Education

Senator Anna Cowin, Chairman

LEAVE AND TERMINAL PAY PROVISIONS FOR EDUCATION EMPLOYEES

SUMMARY

This project reviewed state and local policies that affect terminal payments for unused leave available to employees of school districts and community colleges. Consistent with a 1993 study, this review found that long term financial liabilities are being incurred by local education agencies and the state: on June 30, 1998, the combined total liability was over \$2 billion for compensated absences payable in future years to employees of the state, school districts, and community colleges. Two related findings are:

1. School districts and community colleges continue to extend to all employees the generous sick-leave policies intended to reduce absences of teachers and other instructional staff.
2. The districts and colleges have adopted remarkably diverse policies whose ramifications require continued study.

Some of these policies appear to circumvent a statutory cap on terminal benefits adopted by the 1995 Legislature, and some have the potential to inflate benefits under the Florida Retirement System. The report recommends action by the Legislature and the Florida Retirement System to provide more consistency, to encourage conformity with state-level policy, and to reduce the potential fiscal burden to the educational agencies and the state.

BACKGROUND

State and local fiscal liabilities are directly affected by statutorily established compensation and benefits policies and the rules and practices adopted to implement those policies. The potential liability for leave benefits is an issue deserving continued state attention, particularly as the baby-boom generation nears retirement age. Currently, the liability amounts are: \$1.43 billion for the 67 school districts, \$120.38 million for the 28

community colleges, and \$565 million for state employees.

This interim project explored three interrelated aspects of the leave benefits puzzle: (1) the State's policy for the accrual of, and terminal payment for, annual leave, sick leave, and other terminal benefits for employees of school districts and community colleges (collectively called local education agencies); (2) the local governing boards' implementation policies and practices; and, (3) the related fiscal impacts.

The parameters established in statute for educational agencies to provide leave benefits include:

- C The statutes authorize leave benefits for instructional personnel, educational support employees, and other full-time staff. They include annual leave, sick leave, and other terminal benefits.
- C Employees may be paid for unused sick leave annually and when employment terminates.
- C The statutory formula is far more generous for unused sick leave accumulated by instructional and educational support employees than for state employees. The more generous policies were intended to reduce absences from the classroom so as to prevent disruptions of student learning and to avoid the expense of providing substitutes.

Policy makers have questioned why and to what extent these generous policies have been extended to non-instructional personnel and more highly paid administrative employees. The last comprehensive review of these issues, conducted in 1993-1994 by Senate staff, documented this practice and recommended limiting administrators and non-instructional personnel to the same benefits as state employees. State employees are not paid for accumulated sick leave upon termination unless they have at least 10 years of creditable service; then, only 480 hours may be compensated.

In addition, the 1993-1994 Senate study found that some districts and colleges used an enhanced value for terminal leave benefits to raise the “daily rate of pay” for their employees. This calculation differed from the formula required for state employees and could affect the fiscal liabilities of the Florida Retirement System. This finding raised these local practices and funding issues to the state level. The report recommended calculating daily rate of pay the way it is calculated for state employees -- by basing the calculation on the actual number of compensable hours in the contract year or work year.

The 1995 Legislature capped terminal payments for annual leave accumulated by all full-time school district employees hired on or after July 1, 1995 (ch. 95-381, L.O.F.). The law also capped terminal pay for unused sick leave for some employees of both education agencies.¹ The caps are comparable to maximum terminal leave benefits for state employees. Bills introduced in 1999 would have further capped sick leave benefits for employees in positions other than instructional and educational support, but those bills did not become law.²

METHODOLOGY

¹New district hires may be paid for a maximum of 60 days of annual leave at termination. A full-time employee of a district or college, who was hired on or after July 1, 1995, in a position other than an instructional or educational support position, may be paid for one-fourth of all sick leave accumulated on or after July 1, 1995, but not for more than 60 days of actual pay.

²These bills would have applied to all benefits earned after July 1, 1999, regardless of the date hired. They would have also authorized the boards to make annual contributions to approved pre-tax retirement accounts for those employees rather than exercising the current option of annual cash buy-backs of unused sick leave.

To complete this project, staff of the Senate Education Committee:

1. Reviewed statutes governing public employee leave.
2. Researched trends in leave benefits for public and private sector employees.³
3. Reviewed a 3-year snapshot (1995-1996, 1996-1997, and 1997-1998) of district and college expenditures for leave and other terminal benefits.
4. Surveyed each school district and public community college for current policies and practices for the accrual and payment of terminal benefits and use of pre-tax contribution plans. Fifty-two school districts and all 28 community colleges responded. Many responded by sending portions of personnel manuals and collectively bargained agreements.
5. Participated in discussions and presentations of public employee compensation issues.

FINDINGS

Employees of Florida school districts and community colleges fare well in terms of leave benefits, in comparison with other public and private employees. The 1998 salary survey conducted by MGT of America, Inc., for the Department of Management Services, compared compensation and benefit practices of the southeastern states and a mix of Florida public and private employers. The private organizations paid the most but scored in the lower half of benefit providers. Sheriff departments and school boards had the highest combination of salaries and benefits. Among Florida employers, benefit levels increased as salaries decreased. Table I summarizes the salary survey's comparative findings on leave benefits.

³The primary source documents used were: the *1998 State Employee Benefits Survey* by Workplace Economics, Inc., an annually published resource; the *1998 State of Florida Career Service Salary Survey*, prepared by MGT of America, Inc. for DMS; and the Florida Workforce 2000 Study Commission's work

Table I. Comparison of Annual and Sick Leave Policies*

Organization	Annual Leave	Sick Leave							
	Maximum Hours Accrued (mean)	Average Annual Accrual (hours)	Terminal Pay for Accumulated Hours		Incentive-based Sick Leave Policy		Sick Leave Pool		
			% Yes	Maximum Hours Paid	% Yes	% No	% Yes	% that Cap Pool	Max Hours (mean)
Southeastern States	246.8	96.0	25.0	480.0	0.0	100.0	25.0	8.3	0.0
State of Florida Career Service	240.0	104.0	100.0	480.0	0.0	100.0	100.0	100.0	Each agency determines
School Board	377.6	82.8	75.0	1350.0	16.7	83.3	100.0	50.0	250.0
Community College	253.4	84.7	65.0	1280.0	0.0	100.0	75.0	25.0	92.8
County	212.5	122.7	73.3	397.6	23.3	76.7	33.3	20.0	51.0
Municipality	204.6	90.5	61.8	571.3	27.3	72.7	21.8	7.3	15.3
Hospital	272.9	68.0	22.2	480.0	11.1	88.9	0.0	N.A.	N.A.
Sheriff	174.13	93.4	60.0	342.5	40.0	60.0	53.3	20.0	13.3
Water Mgt District	318.0	104.0	100.0	0.0	50.0	50.0	50.0	50.0	253.5
Private Sector	120.0	48.0	14.3	56.0	0.0	100.0	0.0	N.A.	N.A.

*Adapted from 1998 *State of Florida Career Service Salary Survey*, MGT of America, Inc., December 1998.

Annual Leave

The federal Fair Labor Standards Act does not require employers to provide annual or sick leave. If, however, employees are allowed to accrue annual leave, they have a vested property interest. Annual or vacation leave becomes part of the employment contract and is part of the employee's earned compensation. Once annual leave credits are accrued, the employee is entitled to the paid time off or the cash equivalent of the accrued leave.

In 49 states, employees earn at least two weeks (10 days) of vacation leave during their first year of employment. Employees of the southeastern states earn, on average, a maximum of 246.8 hours (about 31 days) of vacation (annual leave) per year. Like Florida, most public and private institutions increase annual leave benefits with increasing years of service. Public employees are typically allowed to carry forward more annual leave hours than private sector employees. Forty-seven state governments cap the number of annual

leave days state employees may carry over from year to year. In most states, employees must use excess leave during the year or forfeit any hours over the cap. Two states, Florida and North Carolina, convert excess annual leave into sick leave.

All 50 states pay employees for unused annual leave upon retirement or termination. Seven states, including Florida, limit the number of days that can be cashed in at termination. One state considers excess annual leave in calculating retirement benefits, and one state allows state retirees to apply unused annual leave toward health insurance premiums. Florida's career service employees may "bank" up to six weeks (240 hours) of annual leave; the limit for senior management and select exempt employees is 12 weeks (480 hours).

School District Annual Leave

Each district school board may provide annual leave to 12-month employees, including educational support employees (s. 231.434, F.S.). There is no statutory limit on the accumulation of the annual leave. When an employee terminates employment or retires, a school

board may provide a lump-sum payment for accumulated annual leave. There is no statutory limit on terminal payments for annual leave accumulated by school district employees hired before July 1, 1995, but for employees hired on or after that date the amount is capped at 60 days.

There are many variations and little uniformity in each district's policies for the various bargaining and non-bargaining employee groups. The following descriptions are intended to illustrate the differences; the variations are too numerous to classify inclusively.

All 52 responding districts provide annual leave for full-time, 12-month employees. Some provide annual leave for part-time 12-month employees or full-time 11-month employees. The term "full-time" is often used quite liberally; in some cases a full-time employee may be one who is regularly employed for more than four hours daily.

The annual leave accrual rate typically increases with length of service. A common accrual schedule is one annual leave day per month during the first five years of service; 1.25 days per month during the next five years; and 1.5 days per month during and after the tenth year. There are many variations on that theme. Alachua reported the highest monthly accrual rate for all full-time employees (two days per month) but requires employees to use as many as 10 days at the board's convenience, presumably at winter and spring breaks.

Five districts (Hernando, Orange, Osceola, Sarasota, and Sumter) allow unlimited accumulation of annual leave, but limit terminal payouts by either capping the number of hours payable or by paying for leave at the lowest earning rate. The maximum that may be carried forward from year to year in the other districts ranges from a high of 700 hours (87.5 days) for 12-month teachers in Alachua to a low of 160 hours (20 days) in Calhoun, Gadsden, and Liberty.

Only two districts (Gilchrist and Highlands) "buy back" unused annual leave *each* year. In Gilchrist, all 12-month employees are paid for unused annual leave above the 30 days that may be carried forward. In Highlands, 12-month administrators and non-bargaining mid-management staff may be paid for 50 percent of excess annual leave (i.e., more than 480 and 240 hours, respectively), or may convert the excess hours to sick leave. Highland's other 12-month employees forfeit unused annual leave above 240 hours (30 days).

Two districts either do not make terminal payments for unused annual leave (Jackson) or do not provide this benefit to recent hires (Bay). Although Jackson's policy was not explained, it is possible that employees are allowed to take unused annual leave before termination, as is done in several districts. The Bay County School District does not provide terminal pay for annual leave earned after 1993. Any 12-month employee who was employed before leave was capped will receive terminal pay for the unused leave at the 1993 pay rate.

Districts vary in how they compute the "daily rate of pay" when calculating the value of unused annual and sick leave. School districts may use the minimum number of days the employee must be on the job to earn the salary, without including school holidays and other breaks that are included in the contract period and for which the employee is paid. This method makes an hour of unused annual leave worth more than an hour of work. In contrast, the state is required to determine a 12-month employee's daily rate of pay by dividing the annual salary by 260 days (the number of compensable days per year).

Community College Annual Leave

Section 240.319, F.S., authorizes each community college board of trustees to adopt rules and policies governing the employment of personnel. Each board determines employee compensation, including salaries and fringe benefits. The State Board of Community Colleges may adopt guidelines for these issues, but cannot adopt rules setting uniform, statewide procedures.

Like the school districts, the 28 community colleges vary widely in leave policies.

Permanent full-time and part-time employees of community colleges earn annual leave, but there are no annual leave provisions for faculty and staff employed for less than 12 months per year. The accrual rate for leave increases with the employee's years of service with the institution. Although there are variations, generally annual leave is earned according to the following schedule: 1 day per month during the first 5 years of employment, 1.25 days per month during years 6 through 10, and 1.5 days per month after 10 years.

Unlike school districts, community colleges do not have specific statutory authority to compensate employees annually for unused annual leave, but there is no statutory prohibition against annual "buy-back" of leave. No community college has an annual leave buy-back policy. Florida Community College at Jacksonville does,

however, provide the option to be paid for up to 30 days (240 hours) of annual leave prior to entering the Deferred Retirement Option Program (DROP). That policy is effectively an annual leave buy-back because DROP participants may be paid for 30 days annual leave, carry forward excess hours, and ultimately be paid at the end of DROP for an additional 30 annual leave days.

Every community college compensates employees for unused annual leave at termination of employment, unless the employee's position is grant-funded.

The maximum amount of annual leave that can be carried forward by employees ranges from a high of 44 days at most colleges to a low of 15 days at St. Johns River Community College.

Sick Leave

State employees in 40 states earn between 12 to 15 sick leave days (i.e., 96 to 120 hours) each year; 12 sick leave days per year is most common. In 38 states, there is no limit on the amount of sick leave that state employees may accumulate, but there is much variation in when and how much unused sick leave is compensated. Florida and nine other states compensate employees for unused sick leave at termination but limit payouts by basing the percentage paid on length of service, limiting the number of days paid, or limiting the amount of the payment. Forty-one states, including Florida, provide terminal pay for unused sick leave at retirement.

Florida's career service employees do not receive terminal payment for accumulated sick leave unless they have at least 10 years of creditable service; then, only 480 hours may be compensated (i.e., 1/8 of sick leave accrued before 10/1/73 plus 1/4 of sick leave accrued on or after that date).

The private sector is trending toward a paid sick day policy that does not allow employees to bank sick leave from year to year. Florida's Workforce 2000 Study Commission reported that the private sector experiences over 25 percent less paid sick leave than Florida state government.

The 1998 *State of Florida Career Service Salary Study* determined that many of Florida's public employers have incentive-based sick leave policies (i.e., 50 percent of the water management districts, 40 percent of the sheriff departments, and about one-fourth of the counties and municipalities). Most of those incentive plans reward good attendance by providing additional

annual leave or by converting some unused sick leave to annual leave or cash. In that study, about 17 percent of the school boards and none of the community colleges reported incentive-based sick leave policies.

School District Sick Leave

Section 231.40, F.S., requires district school boards to provide sick leave for their employees and sets a schedule for awarding sick leave hours. Each full-time member of the instructional staff must be granted four days of sick leave on the first day of employment of each contract year. All other full-time employees are credited with four days sick leave at the end of the first month of employment. Thereafter, all full-time employees earn one sick leave day at the end of each month. An employee may not earn more than one day for each calendar month employed during the year (i.e., 12 days for a full-time 12 month employee; 10 days for a 10 month employee). There is no statutory limit on the accumulation of sick leave. Boards may permit up to six absences for personal reasons to be deducted from accrued sick leave.

Each board may provide terminal pay for accumulated sick leave and may pay employees annually for up to 80 percent of unused sick leave. If a board provides terminal pay for sick leave accumulated by instructional staff and educational support employees, the payments must follow a statutory formula [s. 231.40(3)(a)4., F.S.]. The formula progressively increases the percentage paid as years of service increase (35 percent of accumulated sick leave is paid when termination occurs during the first 3 years of service; 40 percent during 4 through 6 years of service; 45 percent during years 7 through 9; 50 percent during year 10 through 12; and 100 percent during and after 13 years of service). This formula applies regardless of when the instructional or educational support employee was hired. If a district employee was hired on or after July 1, 1995, and serves in a position other than an instructional or educational support position, the employee may receive terminal pay for one-fourth of all unused sick leave accrued on or after July 1, 1995, up to a maximum of 60 days. Board policies in effect on July 1, 1995, govern sick leave accumulated before that date.

Terminal payment for accumulated sick leave is made at the employee's "daily rate of pay" but there is no statutory definition of that term.

Community College Sick Leave

Section 240.343, F.S., governs the accrual and payment of sick leave for community college employees. Each full-time community college employee is awarded one

day of sick leave for each calendar month or major fraction of a calendar month of service, but not more than 12 days in each fiscal year, and the leave is cumulative from year to year. Each community college board of trustees may credit the full 12 days on the first day of employment each fiscal year and may permit up to 4-days personal leave to be taken from accrued sick leave.

Each board of trustees determines whether to provide terminal pay for accumulated sick leave when full-time instructional or educational support employees retire. If the board approves terminal sick leave pay, it must not exceed statutory caps that increase as years of service increase. During the first 3 years, the maximum payout is 35 percent of the accumulated sick leave balance, increasing to a maximum of 50 percent during the tenth year, and then increasing 2.5 percent annually for the next 20 years of service.

The statutes cap terminal sick leave payments for any full-time employee who was hired on or after July 1, 1995, and who is not a member of the instructional staff or an educational support employee. Upon termination, those employees may be paid for one-fourth of all unused sick leave accrued on or after July 1, 1995, up to a maximum of 60 days of pay. Terminal pay for sick leave accumulated before July 1, 1995, will be made according to the board policy in effect on July 1, 1995.

The statutes governing community colleges neither authorize nor prohibit annual buy-back of unused sick leave.

The state's policy regarding the transfer of accumulated sick leave among state agencies and community colleges is unclear. Under s. 240.343(2)(a), F.S., each community college may accept the transfer of an employee's sick leave accumulated through previous employment by the State University System or by another Florida community college, school district, or state agency, including the Department of Education. State agencies may, within limits, transfer a state employee's accumulated annual or sick leave to another state agency. State agencies are not required to transfer leave to community colleges or other locally-based and locally-governed entities that are not within the state government positions and pay plans authorized under s. 216.251(2)(a), F.S.

The colleges make use of the flexibility provided by these state regulations. All community colleges pay employees for unused sick leave upon termination of employment, but only Gulf Coast Community College

buys back sick leave on an annual basis; the college did not explain the policy. Like many school districts, several community colleges reinstate previously accumulated sick leave when a former employee is re-employed and had not received a payout for unused sick leave at termination.

Other Terminal Benefits

Statutorily-authorized Terminal Benefits

The statutes authorize an early retirement incentive and many school districts and community colleges use it. To be eligible for this incentive, the employee must have 25 or more years of creditable service, be at least 50 years old, and apply for retirement under the Florida Retirement System. A school district employee covered under plan "E" of the Teachers' retirement System must apply for retirement and be at least 55 years old.

Use of Pre-tax Compensation Plans

The statutes neither authorize nor prohibit terminal payments for annual leave, sick leave, or other terminal benefits through tax-sheltered compensation plans. When compensation is made to an IRS-approved pre-tax plan, the employer and employee realize significant federal tax savings. Participating employers do not have to pay the 7.65 percent federal payroll tax for FICA (Federal Insurance Contributions Act) and Medicare. Participating employees receive 7.65 percent more than they would have received with a lump-sum cash payment. Participating employees also enjoy federal income tax savings if distributions are deferred until they are in a lower federal income tax bracket. Federal regulations limit the amount that may be paid into these tax-sheltered plans to a maximum of \$30,000 or 20 percent of the employee's combined fiscal year wages and terminal benefits payments, whichever is less.

Among school districts and community colleges that use this benefit, some said they require certain employee groups -- primarily administrators -- to receive terminal payments through a tax-sheltered plan. These districts and colleges are offering these plans as a bargainable option for other employee groups.

RECOMMENDATIONS

School districts and community colleges could reduce costs associated with terminal benefits if they were subject to the same policies that apply to terminating state employees. Any savings realized from this policy shift could be applied toward meeting legislative priorities such as enhancing the quality or academic

programs, reducing class size, extending the school year, providing meaningful professional development opportunities for teachers and faculty. Based on the findings of this report the Education Committee staff offers the following recommendations:

1.

Section 240.319, F.S., should be amended or a new section of law should be created to limit terminal pay for annual leave accrued by community college employees after a date certain. The maximum should be 60 days, to conform with requirements for state and school district employees.

There is no statutory authorization or guidance for the accrual and terminal compensation of annual leave for community college employees.

2.

The appropriate sections of chapters 231 and 240, F.S., should be amended to require “daily rate of pay” to be calculated as it is for state employees -- by dividing the employee’s annual or contract salary by the number of compensable days in the annual or contract period.

Without policy guidelines, terminal pay could inflate the final compensation of employees and possibly impact the calculation of retirement benefits. There is no uniformity in the way school districts and community colleges calculate terminal pay for each hour or day of unused annual leave and sick leave. In some districts, an hour of unused annual leave is worth more than the employee would have been paid for an hour of work. This enhanced value results when annual salary is divided by the number of “duty days” rather than by the number of compensable days in the work year. Duty days are days the employee has to be on the job to earn the salary -- paid days in the work year *minus* annual and sick leave days earned that year. In contrast, the calculation for state employees is to divide the annual salary of a 12-month employee by 260 days.

3.

Officials at the Florida Retirement System should review the practice of providing pre-retirement terminal pay benefits to determine the impact, if any, on the state retirement system.

Some school districts and community colleges pay employees’ terminal leave benefits over a multi-year period. In some instances these payments are made 3 to 5 years before employment actually terminates. Theoretically, the 500-hour limit on the “annual leave spike” should control any potential impact on the Florida Retirement System; however, these payments could affect FRS benefits by increasing annual compensation during what is likely to be among the employee’s highest five years’ earnings.

4.

The Legislature should prohibit policies designed to circumvent the statutory cap placed on terminal pay for sick leave.

Some districts and colleges apply the more generous policies allowed prior to July 1, 1995, to sick leave earned in another education sector and transferred into the district or college after July 1, 1995. Such policies effectively shift the fiscal burden for uncompensated sick leave from one jurisdiction to another, probably at a higher pay rate.

COMMITTEE(S) INVOLVED IN REPORT (*Contact first committee for more information.*)

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MEMBER OVERSIGHT

Senators McKay and Jones